

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
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# A Bill

HOUSE BILL 2088

By: Representatives Leding, Murdock, M. Hodges, Magie, G. McGill, Sabin, D. Whitaker, Blake, V. Flowers, M.J. Gray, Tucker, Burch, Love, F. Allen

By: Senators Elliott, L. Chesterfield, Bond

## For An Act To Be Entitled

AN ACT TO PROVIDE ENHANCED PENALTIES FOR A CRIMINAL OFFENSE COMMITTED BECAUSE OF THE VICTIM'S RACE, COLOR, RELIGION, ETHNICITY, ANCESTRY, NATIONAL ORIGIN, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY; AND FOR OTHER PURPOSES.

## Subtitle

TO PROVIDE ENHANCED PENALTIES FOR A CRIMINAL OFFENSE COMMITTED BECAUSE OF THE VICTIM'S RACE, COLOR, RELIGION, ETHNICITY, ANCESTRY, NATIONAL ORIGIN, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 5, Chapter 4, Subchapter 7, is amended to add an additional section to read as follows:

5-4-704. Enhanced penalties for offenses committed because of a victim's race, color, religion, ethnicity, ancestry, national origin, sexual orientation, gender, gender identity, or disability.

(a) As used in this section:

(1) "Because of" means that:

(A) A victim's actual or perceived trait enumerated in subsection (b) of this section was a cause in fact of an offense, regardless



of whether or not other causes also existed; and

(B) When multiple concurrent causes existed, the victim's actual or perceived trait enumerated in subsection (b) of this section was a substantial factor in the commission of an offense;

(2)(A) "Disability" means a physical or mental impairment that substantially limits a major life function.

(B) "Disability" does not include:

(i) Compulsive gambling;

(ii) Kleptomania;

(iii) Pyromania;

(iv) Current use of illegal drugs or psychoactive substance use disorders resulting from illegal use of drugs; or

(v) Alcoholism;

(3) "Gender" means the condition of being male, female, or transgender;

(4) "Gender identity" means a person's actual or perceived gender-related characteristics, identity, or expression whether or not typically associated with a person's sex at birth;

(5) "Purposely selected the victim" does not mean that a defendant's mere abstract belief or expression was hostile or contrary to a victim's actual or perceived trait enumerated in subsection (b) of this section or that a defendant is or was associated with a group opposed to a victim's actual or perceived trait enumerated in subsection (b) of this section, unless the abstract belief, expression, or association was part of the cause of an offense; and

(6) "Sexual orientation" means actual or perceived heterosexuality, homosexuality, or bisexuality.

(b) A defendant is subject to a sentence enhancement under this section if the defendant purposely selected the victim of an offense because of the victim's actual or perceived:

(1) Race;

(2) Color;

(3) Religion;

(4) Ethnicity;

(5) Ancestry;

(6) National origin;

(7) Sexual orientation;

(8) Gender, except for an offense under § 5-14-101 et seq., § 5-26-201 et seq., § 5-26-301 et seq., § 5-26-401 et seq., or § 5-26-501 et seq.;

(9) Gender identity; or

(10) Disability.

(c) To seek a sentence enhancement under this section, the prosecuting attorney shall file with the court written notice in the information or indictment requesting a bifurcated trial and indicating that the defendant, upon a finding of guilt, is subject to the enhanced penalties under this section.

(d)(1) If a defendant subject to this section pleads guilty, nolo contendere, or is found guilty of an offense and the trier of fact determines beyond a reasonable doubt at the sentencing phase of the bifurcated trial that the defendant purposely selected the victim of the offense because of the victim's actual or perceived trait enumerated in subsection (b) of this section, then the minimum and maximum penalties for the offense, including the amount of any fine and the length of any term of imprisonment or period of probation or suspended imposition of sentence, is increased by twenty percent (20%).

(2) The sentence enhancement under this section shall not exceed twenty percent (20%) regardless of the number of the victim's actual or perceived traits enumerated in subsection (b) of this section that caused the defendant to purposely select the victim.

SECTION 2. Arkansas Code Title 12, Chapter 12, Subchapter 1, is amended to add an additional section to read as follows:

12-12-110. Hate crimes data collection.

(a) As used in this section "hate crime" means an offense committed by a person who targeted the victim of the offense due to the victim's actual or perceived:

(1) Race;

(2) Color;

(3) Religion;

(4) Ethnicity;

(5) Ancestry;

(6) National origin;

(7) Sexual orientation;

(8) Gender, except for an offense under § 5-14-101 et seq., § 5-26-201 et seq., § 5-26-301 et seq., § 5-26-401 et seq., or § 5-26-501 et seq.;

(9) Gender identity; or

(10) Disability.

(b)(1) With the assistance of the Department of Arkansas State Police and the Arkansas Crime Information Center, the Attorney General shall establish and maintain a central repository for the collection, analysis, and dissemination of hate crimes data.

(2)(A) Each law enforcement agency shall submit a quarterly report to the Attorney General concerning the commission of a hate crime within its jurisdiction.

(B) The quarterly report required under subdivision (b)(2)(A) of this section shall contain without limitation the following information, if known:

(i) All relevant demographic information concerning the suspect or suspects;

(ii) All relevant demographic information concerning the victim or victims, including a specific reference to the victim's or victims' personal characteristic or characteristics that the law enforcement agency believed led to the commission of the hate crime;

(iii) Status or outcome of the criminal investigation or, if applicable, criminal prosecution; and

(iv) A summary of the hate crime, including all relevant information known at the time of the report and specifically noting whether a deadly weapon was used.

(3) Data concerning a hate crime maintained under the central repository shall be disseminated upon request to a local law enforcement agency, political subdivision of the state, or state agency.

(c)(1) The Attorney General shall publish on December 1 of each year an annual summary and report of the data required to be collected and maintained by this section, and the annual summary and report shall be delivered to the Governor, the chairs of Legislative Council, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the

United States Attorneys for the Eastern and Western Districts of Arkansas,  
and the Federal Bureau of Investigation.

(2) The annual summary and report required under this subsection  
shall be made available in a format acceptable for use by the Federal Bureau  
of Investigation for its annual Hate Crimes Statistics report.